

SEP 01 2006

HAROLD S. MARENUS, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No.	EW-05-1379-MaHK
LEONARD R. GREGER,)	Bk. No.	04-04741
Debtor.)	Adv. No.	04-00221
LEONARD R. GREGER,)		
Appellant,)		
v.)		
FORREST HOLLIDAY,)		
Appellee.)		

MEMORANDUM¹

Argued by Telephone Conference
and Submitted on June 22, 2006

Filed - September 1, 2006

Appeal from the United States Bankruptcy Court
for the Eastern District of Washington

Honorable Patricia C. Williams, Chief Bankruptcy Judge, Presiding

Before: Marlar, Hollowell² and Klein, Bankruptcy Judges.

¹ This disposition is not appropriate for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of res judicata, including issue and claim preclusion. See 9th Cir. BAP Rule 8013-1.

² Hon. Eileen W. Hollowell, United States Bankruptcy Judge for the District of Arizona, sitting by designation.

[illegible]

10 By focusing on the elements of common law assault, Debtor has
11 overlooked the factual allegations which clearly established an
12 assault and battery. Because such a tort under Washington law
13 required proof of a defendant's subjective intent to injure, we
14 AFFIRM.

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1 Prepetition, Holliday had initiated a lawsuit against Debtor
2 in Washington state court entitled "Complaint for Personal
3 Injuries" ("State Court Complaint"). It alleged, in pertinent
4 part:

5 2.1 On December 3, 2002, plaintiff FORREST HOLLIDAY
6 traveled to Spokane, Washington for the
7 purpose of making contact with homeowner, defendant
8 LEONARD R. GREGER Plaintiff arrived at the
9 defendant's residence at approximately 10:00 a.m. and
10 noticed the defendant standing on his front patio.
11 After exiting his vehicle, plaintiff met the
12 disgruntled defendant in the front yard and
introduced himself. After a short introduction, the
defendant began yelling obscenities and took hold of
plaintiff's shoulder and started shaking him.
Defendant then pushed the plaintiff toward his
vehicle and slammed him into the driver's side door.
The aforementioned acts of defendant caused plaintiff
to sustain injury.

13 3.1 Plaintiff FORREST HOLLIDAY'S injuries and damages as
14 hereinafter alleged were the direct and proximate
15 result of defendant LEONARD R. GREGER'S intention to
16 cause harmful or offensive contact with the
plaintiff, constituting intentional assault on his
person.

17 4.1 As the direct and proximate result of the occurrence,
18 plaintiff FORREST HOLLIDAY has sustained injury,
19 including but not limited to, physical and emotional
20 injury, past and future pain and suffering, loss of
21 enjoyment of life, economic loss in the form of past
and future medical bills and associated expenses,
lost wages, loss of earning capacity and permanent
partial disability, all in an amount to be proven at
trial.

22 State Court Complaint (July 17, 2003).

23 Following a bench trial, at which Debtor appeared pro se and
24 testified on his own behalf, the state court entered a \$29,630.07
25 money judgment ("Judgment") in Holliday's favor. The state court
26 did not issue any separate findings or conclusions of law.

27 In bankruptcy court, Holliday attached the State Court
28 Complaint and Judgment to his § 523 Complaint, wherein he repeated

1 the same basic allegations. Specifically, Holliday alleged:

2 5. On December 3, 2002, defendant committed the
3 following intentional acts:

4 With intent to cause harmful or offensive contact
5 with the plaintiff, the defendant did willfully and
6 intentionally take hold of the defendant's shoulder
7 and started violently shaking him and slamming him
8 into plaintiff's car door.

9 6. Plaintiff is informed and believes that defendant
10 committed the intentional acts . . . , and that the
11 defendant therefore intended to injure plaintiff.

12 7. As a result of defendant's intentional acts . . . ,
13 plaintiff suffered damages and loss

14 § 523 Complaint (Sept. 17, 2004).

15 Debtor answered the § 523 Complaint and generally denied the
16 allegations. He did not plead any affirmative defenses.

17 A trial went forward on June 30, 2005; both parties appeared,
18 with Debtor appearing pro se.

19 Holliday's attorney stated that his evidence consisted of the
20 State Court Complaint and Judgment. Holliday's attorney argued
21 that the Judgment established that the debt was for an intentional
22 tort and asked the bankruptcy court to apply the doctrine of
23 preclusion to find it nondischargeable under § 523(a)(6) as a debt
24 for a "willful and malicious injury."⁴

25 Debtor testified and maintained his innocence, denying that
26 the assault and battery upon Holliday ever occurred and explaining
27 Holliday's injury as "preexisting." Tr. of Proceedings (June 30,
28 2005) at 19:16. He stated that he could not afford to properly

⁴ Holliday also took the stand, but only to authenticate the State Court Complaint and Judgment. On cross-examination, he testified that he had been unable to attend the state court trial "due to the injury I had received from the assault." Tr. of Proceedings (June 30, 2005), at 17:7-9. The bankruptcy court did not rely on this evidence in making her ruling, however.

1 defend himself and he had been "terrorized" by Holliday. Id. at
2 20:1. Nonetheless, he admitted that he had appeared and testified
3 in the state court trial.

4 The bankruptcy court then explained that a "willful and
5 malicious injury . . . really means . . . intentional tort," and
6 that its job was "only to look at what the state court did and
7 say, did the state court in fact determine that . . . there was
8 liability for an intentional tort and that there were damages?"
9 Id. at 24:11-12; 17-20.

10 Next, the court applied the elements of issue preclusion. It
11 looked to the allegations of the State Court Complaint in order to
12 determine that the nature of the litigation and the subsequent
13 Judgment was for an intentional assault tort "to cause harmful or
14 otherwise offensive contact with the plaintiff." See Tr. of
15 Proceedings (June 30, 2005), at 25:14-22. The court concluded
16 that the evidence established the elements of nondischargeability
17 of the Judgment debt under § 523(a)(6).

18 A judgment in accordance with its ruling was entered on June
19 30, 2005. The court then granted Debtor's motion for an extension
20 of time in which to file an appeal, and Debtor, now with counsel,
21 filed a timely notice of appeal.

22 23 ISSUE 24

25 The sole issue is whether the bankruptcy court erred in
26 applying issue preclusion to the Judgment in order to determine
27 that the debt was nondischargeable.

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2 STANDARD OF REVIEW
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4 The availability of issue preclusion is reviewed de novo as a
5 mixed question of law and fact in which legal questions
6 predominate. Moncur v. Agricredit Acceptance Co. (In re Moncur),
7 328 B.R. 183, 186 (9th Cir. BAP 2005). The decision whether a
8 claim is dischargeable also presents mixed issues of law and fact,
9 which we review de novo. Diamond v. Kolcum (In re Diamond), 285
10 F.3d 822, 826 (9th Cir. 2002).
11

12 DISCUSSION
13

14 Section 523(a)(6) provides, "(a) A discharge under . . . this
15 title does not discharge an individual debtor from any debt-. . .
16 (6) for willful and malicious injury by the debtor to another
17 entity or to the property of another entity." 11 U.S.C.
18 § 523(a)(6). Holliday had to prove by a preponderance of the
19 evidence that Debtor's actions were "willful and malicious."
20 Grogan v. Garner, 498 U.S. 279, 291 (1991).

21 The bankruptcy court applied the doctrine of issue preclusion
22 and concluded that the state court had already determined that
23 Debtor's conduct was willful. Issue preclusion principles apply
24 in discharge exception proceedings pursuant to § 523(a). Grogan,
25 498 U.S. at 284 & n.11.⁵
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28 ⁵ However, a preexisting judgment does not have "claim"
preclusive effect on the bankruptcy court's determination of
dischargeability. Sasson v. Sokoloff (In re Sasson), 424 F.3d
864, 873 (9th Cir. 2005); Brown v. Felsen, 442 U.S. 127, 138-39 &
n.10 (1979).

1 Issue preclusion prevents the relitigation of factual and
2 legal issues already determined by other courts. Gayden v.
3 Nourbakhsh (In re Nourbakhsh), 67 F.3d 798, 801 (9th Cir. 1995).
4 Our circuit has held that "[t]he full faith and credit requirement
5 of § 1738 compels a bankruptcy court in a § 523(a)(2)(A)
6 nondischargeability proceeding to give collateral estoppel [issue
7 preclusive] effect to a prior state court judgment." Id. This
8 means, in the bankruptcy discharge context, that "[i]f, in the
9 course of adjudicating a state-law question, a state court should
10 determine factual issues using standards identical to those of [§
11 523], then collateral estoppel [issue preclusion], in the absence
12 of countervailing statutory policy, would bar relitigation of
13 those issues in the bankruptcy court." Brown, 442 U.S. at 139
14 n.10. See also Sasson, 424 F.3d at 872.

15 In determining whether a party should be precluded from
16 relitigating an issue decided in a prior state court action, the
17 bankruptcy court must look to that state's law of issue
18 preclusion. Diamond, 285 F.3d at 826 (citing Nourbakhsh, 67 F.3d
19 at 800). Under Washington law, a party can invoke issue
20 preclusion by demonstrating the following elements: "(1) identical
21 issues; (2) a final judgment on the merits; (3) the party against
22 whom the plea is asserted must have been a party to or in privity
23 with a party to the prior adjudication; and (4) application of the
24 doctrine must not work an injustice on the party against whom the
25 doctrine is to be applied." Diamond, 285 F.3d at 826 (citing
26 Reninger v. State Dep't of Corr., 134 Wash. 2d 437, 449, 951 P.2d
27 782, 788 (1998)). The party asserting the doctrine has the burden
28 of proving these elements. Nielson v. Spanaway Gen. Med. Clinic,

1 135 Wash. 2d 255, 262-63, 956 P.2d 312, 316 (1998) (en banc). The
2 Washington Supreme Court regards its preclusion doctrine as
3 consistent with the Restatement (Second) of Judgments. E.g., id.,
4 135 Wash. 2d at 262, 956 P.2d at 315.

5 Elements two through four having been met,⁶ Debtor's
6 arguments on appeal challenge only the first element--whether the
7 state court adjudicated facts proving the identical "willful and
8 malicious" elements § 523(a)(6).

9 The determination of a "willful and malicious" injury
10 requires a two-step analysis. Khaligh v. Hadaegh (In re Khaligh),
11 338 B.R. 817, 831 (9th Cir. BAP 2006). The first step of the
12 § 523(a)(6) inquiry is whether there was a "willful" injury, which
13 "triggers in the lawyer's mind the category 'intentional torts,'
14 as distinguished from negligent or reckless torts." Kawaauhau v.
15 Geiger, 523 U.S. 57, 61-62 (1998). A willful injury is
16 deliberate, and it is "one which, in fact, targets a particular
17 individual for harm and in so doing, injures him." Blandino v.
18 Bradshaw (In re Bradshaw), 315 B.R. 875, 886 (Bankr. D. Nev.
19 2004). Thus, the willfulness test is subjective: "[Section]
20 523(a)(6)'s willful injury requirement is met only when the debtor
21 has a subjective motive to inflict injury or when the debtor
22 believes that injury is substantially certain to result from his
23

24 ⁶ The state court Judgment was final and Debtor was a party
25 to that action. Although Debtor maintains that he is innocent of
26 assault and battery, he has not seriously argued that he was
27 denied a full and fair trial, considering that he testified on his
28 own behalf. Therefore, there are no grounds for a defense against
the fourth element of issue preclusion--whether application of the
doctrine would work an injustice. Nielson, 135 Wash. 2d at 265
(focusing on "whether the parties to the earlier adjudication were
afforded a full and fair opportunity to litigate their claim in a
neutral forum.")

1 own conduct." Carrillo v. Su (In re Su), 290 F.3d 1140, 1142 (9th
2 Cir. 2002).

3 The second step of the § 523(a)(6) inquiry is whether
4 appellant's conduct was "malicious." Khaligh, 338 B.R. at 831.
5 The relevant test for "malicious" conduct is: (1) a wrongful act;
6 (2) done intentionally; (3) which necessarily causes injury; and
7 (4) which is done without just cause and excuse. Jett v. Sicroff
8 (In re Sicroff), 401 F.3d 1101, 1106 (9th Cir. 2005) (as amended).
9 It can be inferred that a "willful" injury meets these
10 requirements; in particular, "evidence in the record of specific
11 intent to injure" negates just cause or excuse. Khaligh, 338 B.R.
12 at 831.

13 Debtor maintains that Holliday could not prove that the
14 identical issues were litigated in state court because the state
15 court did not issue any findings of intent or actual injury, and a
16 judgment based on "intentional assault" requires neither
17 subjective intent nor resultant injury, under Washington law.

18 Only the State Court Complaint and Judgment were before the
19 bankruptcy court. The state court did not enter any formal
20 findings of fact, nor did the Judgment contain any factual
21 findings. Nor did the record before the bankruptcy court include
22 a transcript of the state court proceedings to enable the court to
23 discern any oral findings. To the extent Debtor is asserting that
24 the bankruptcy court erred in considering this evidence, we do not
25 find error.

26 Washington Superior Court Civil Rule ("CR") 52(a)(1)
27 requires, with some exceptions, that "[i]n all actions tried upon
28 the facts without a jury . . . the court shall find the facts

1 specially and state separately its conclusions of law. . . ." CR
2 52(a)(4) provides that formal findings of fact and conclusions of
3 law may be included in a written opinion or memorandum of
4 decision. Such findings are binding on an appellate court if they
5 are supported by substantial evidence. Flannery v. Bishop, 81
6 Wash. 2d 696, 699, 504 P.2d 778, 780 (1973).

7 CR 52(a) is similar to Federal Rule of Civil Procedure
8 ("FRCP") 52(a). In addition to aiding the appellate court by
9 affording it a clear understanding of the basis for the trial
10 court's decision, another purpose of FRCP 52(a) is to make
11 definite precisely what is being decided by the case in order to
12 apply the preclusion doctrines. See Charles Alan Wright & Arthur
13 R. Miller, Fed. Prac. & Proc. Civ. 2d § 2571 (Thompson/West 2006).

14 CR 52(d) provides that "[a] judgment entered in a case tried
15 to the court where findings are required, without findings of fact
16 having been made, is subject to a motion to vacate within the time
17 for the taking of an appeal. . . ." In addition, the Revised Code
18 of Washington ("RCW") provides that "[t]he finding of the court
19 upon the facts shall be deemed a verdict, and may be set aside in
20 the same manner and for the same reason as far as applicable, and
21 a new trial granted." RCW 4.44.060.

22 Here, Debtor did not move to vacate the Judgment for a CR
23 52(a) violation. Therefore, he waived any alleged error based on
24 a lack of written factual findings. See Lambert v. Lambert, 66
25 Wash. 2d 503, 508, 403 P.2d 664, 667 (1965).

26 Even in the absence of any written factual findings,
27 Washington courts will review a trial court's judgment if there is
28 no doubt about the questions it decided in the case and the theory

1 upon which it was decided. Backlund v. Univ. of Wash., 137 Wash.
2 2d 651, 657 n.1, 975 P.2d 950, 954 n.1 (1999). Usually, this is
3 determined by looking to the memorandum decision or oral rulings.
4 Id. However, case law holds that, even in the absence of a
5 memorandum decision or oral rulings, the allegations of a
6 complaint that fully support the judgment are deemed established.
7 Grant v. Pac. Gamble Robinson Co., 22 Wash. 2d 65, 66, 154 P.2d
8 301, 302 (1945); O'Neal Land Co. v. Judge, 196 Wash. 224, 226, 82
9 P.2d 535, 536 (1938); Giles v. Giles, 187 Wash. 599, 603, 60 P.2d
10 707, 709 (1936). These opinions do not expressly limit their
11 holdings to a review of only legal issues on undisputed facts. In
12 fact, Debtor concedes that under Washington law, "when there are
13 no findings of fact issued by the lower court in support of its
14 decision, a reviewing court assumes that the allegations in the
15 complaint were established." Opening Brief (Jan. 17. 2006), at 9.

16 Therefore, we hold that it was proper for the bankruptcy
17 court to look to the State Court Complaint and Judgment in order
18 to determine whether the identical factual issues had already been
19 resolved.

20 The gravamen of Debtor's appeal is that the Judgment was one
21 for common law assault or intentional assault and that such cause
22 of action requires neither specific intent to cause harm nor a
23 resultant injury. Therefore, he maintains that there was
24 insufficient proof of "willfulness" under § 523(a)(6).

25 Debtor is correct that at least one form of common law
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1 assault does not require specific intent.⁷ Nonetheless, his
2 argument is off the mark because the State Court Complaint alleged
3 an "intentional assault on his [Holliday's] person." Washington's
4 common law recognizes three definitions of assault:

- 5 (1) an attempt, with unlawful force, to inflict bodily
6 injury upon another [attempted battery];
- 7 (2) an unlawful touching with criminal intent [actual
8 battery]; and
- 9 (3) putting another in apprehension of harm whether or
not the actor intends to inflict or is capable of
inflicting that harm [common law assault].

10 Wilson, 125 Wash. 2d at 218, 883 P.2d at 323 (alterations in
11 original).

12 The allegations of Holliday's State Court Complaint
13 clearly pleaded a cause of action for all three forms of assault
14 and battery. Holliday's State Court Complaint alleged (emphasis
15 added):

16 2.1 On December 3, 2002, plaintiff FORREST HOLLIDAY
17 traveled to . . . Spokane, Washington for the purpose

18 ⁷ Washington case law is inconsistent on whether the tort of
19 intentional assault requires specific intent to harm. The case
20 cited by Debtor says that it does not. See State v. Byrd, 125
21 Wash. 2d 707, 712-13, 887 P.2d 396, 399 (1995) (citing Howell v.
Winters, 58 Wash. 436, 438, 108 P. 1077, 1078 (1910)). Accord,
22 State v. Wilson, 125 Wash. 2d 212, 217-18, 883 P.2d 320, 323
(1994). But see Brower v. Ackerley, 88 Wash. App. 87, 92-93, 943
23 P.2d 1141, 1144-45 (1997), which explains that the discussion of
assault in Howell "accords with the Restatement (Second) of Torts
24 § 21 (1965), which defines assault, in relevant part, as follows:
'(1) An actor is subject to liability to another for assault if
25 (a) he acts intending to cause a harmful or offensive contact with
the person of the other or a third person, or an imminent
26 apprehension of such a contact, and (b) the other is thereby put
in such imminent apprehension.'" (Emphasis added.) Therefore,
27 another definition of common law assault may require proof that:
"An act is done with the intention of putting the other in
28 apprehension of an immediate harmful or offensive contact if it is
done for the purpose of causing such an apprehension or with
knowledge that, to a substantial certainty, such apprehension will
result." Id., cmt. d.

1 of making contact with homeowner, defendant LEONARD
2 R. GREGER Plaintiff arrived at the
3 defendant's residence at approximately 10:00 a.m. and
4 noticed the defendant standing on his front patio.
5 After exiting his vehicle, plaintiff met the
6 disgruntled defendant in the front yard and
7 introduced himself. After a short introduction, the
8 defendant began yelling obscenities and took hold of
9 plaintiff's shoulder and started shaking him.
10 Defendant then pushed the plaintiff toward his
11 vehicle and slammed him into the driver's side door.
12 The aforementioned acts of defendant caused plaintiff
13 to sustain injury.

14 3.1 Plaintiff FORREST HOLLIDAY'S injuries and damages as
15 hereinafter alleged were the direct and proximate
16 result of defendant LEONARD R. GREGER'S intention to
17 cause harmful or offensive contact with the
18 plaintiff, constituting intentional assault on his
19 person.

20 A common law "battery" is an intentional tort defined as a
21 "harmful or offensive contact with a person, resulting from an act
22 intended to cause the plaintiff or a third person to suffer such a
23 contact, or apprehension that such a contact is imminent."
24 McKinney v. City of Tukwila, 103 Wash. App. 391, 408, 13 P.3d 631,
25 641, (2000); Bundrick v. Stewart, 128 Wash. App. 11, 18, 114 P.3d
26 1204, 1208 (2005). This definition is in accord with the
27 Restatement (Second) of Torts § 18 (1965) which defines battery as
28 follows:

- 21 (1) An actor is subject to liability to another for
22 battery if
23 (a) he acts intending to cause a harmful or
24 offensive contact with the person of the other
25 or a third person, or an imminent apprehension
26 of such a contact, and
27 (b) an offensive contact with the person of the
28 other directly or indirectly results.
- (2) An act which is not done with the intention stated in
Subsection (1, a) does not make the actor liable to
the other for a mere offensive contact with the
other's person although the act involves an
unreasonable risk of inflicting it and, therefore,

1 would be negligent or reckless if the risk threatened
2 bodily harm.

3 The facts relied upon by the state court were that Debtor
4 committed an intentional assault which led to a battery. See also
5 McKinney, 103 Wash. App. at 408 (quoting W. Page Keeton et al.,
6 Prosser and Keeton on Torts § 9, at 39 (5th ed. 1984)). Without
7 using the word "battery," the bankruptcy court properly made a
8 completely logical inference that a battery occurred from the
9 facts of the intentional assault.

10 Such an assault and battery established the requisite
11 subjective intent. Washington law incorporates the Restatement
12 definition of intent for a battery. See Bradley v. Am. Smelting &
13 Refining Co., 104 Wash. 2d 677, 682, 709 P.2d 782, 785 (1985),
14 adopting Restatement (Second) of Torts § 8A (1965), which states:

15 The word "intent" is used throughout the Restatement of
16 this Subject to denote that the actor desires to cause
17 consequences of his act, or that he believes that the
consequences are substantially certain to result from it.

18 Importantly, in Washington, a battery requires the specific
19 intent to injure or the knowledge of a substantial certainty of
20 harm. "[T]he act must be done for the purpose of causing the
21 contact or apprehension or with knowledge on the part of the actor
22 that such contact or apprehension is substantially certain to be
23 produced." Garratt v. Dailey, 46 Wash. 2d 197, 201, 279 P.2d
24 1091, 1093 (1955) (quoting Restatement (First) of Torts, 29, § 13,
25 cmt. on clause (a) (1934)). See also Restatement (Second) of
26 Torts § 8A (Intent) (1965).

27 In the seminal substantial certainty case of Garratt, a five-
28 year old boy was visiting his aunt at a backyard gathering. As

1 his aunt was beginning to sit down on a lawn chair, the boy
2 withdrew the chair, the aunt fell and sustained a fractured hip
3 and other serious injuries. She sued the boy for battery. In the
4 first trial, the state court dismissed the action finding that the
5 boy had no purpose of causing injury. On appeal, the state
6 supreme court then remanded the case for clarification on the
7 issue of subjective intent. It stated that the test was whether
8 the boy, when he moved the chair, "knew with substantial certainty
9 that the plaintiff would attempt to sit down where the chair had
10 been." Id., 46 Wash. 2d at 202. If the boy had such knowledge, a
11 battery would have been established, the supreme court held. Id.⁸

12 Thus, the intent requirement is identical for a battery under
13 Washington law and a "willful" injury under § 523(a)(6). See Su,
14 290 F.3d at 1142.

15 Here, the allegations leave nothing to the imagination, nor
16 do they cast doubt as to the theory upon which the state court
17 based its decision. Debtor purposefully grabbed Holliday, shook
18

19 ⁸ The proposed Restatement (Third) Torts Physical Harm § 1
20 (Intent), Reporters' Note cmt. b (2005), states that the dual
21 definition of intentional tort--as purpose and knowledge--was not
22 very well illustrated on Garratt's facts:

23 Yet on the case's facts, the distinction between the
24 presence of substantially certain knowledge and the
25 absence of purpose is unpersuasive. If five-year-old
26 Brian removed the chair knowing with certainty that his
27 aunt would fall, he almost certainly did this as a form of
28 prank. But to size this up as a prank is to acknowledge
that Brian wanted his aunt to hurt herself, if only
slightly--or at least that he wanted to embarrass or
offend her. Moreover, so long as a defendant harbors such
a purpose to hurt or offend, appropriate doctrines of
proximate cause expose that defendant to liability for the
full harm that ensues, even though that harm is more
severe than what the defendant expects. . . . On balance,
then, Garratt v. Dailey is an unsatisfying example of § 8A
in operation.

1 him, and slammed him against a car. Debtor acted with either
2 intent to injure, or with the substantial certainty that his acts
3 would harm Holliday. Furthermore, neither the allegations nor the
4 Judgment based thereon raise any doubt as to whether the acts were
5 due to Debtor's negligence or recklessness, rather than an
6 intentional tort. See Geiger, 523 U.S. at 61-62; Honegger v.
7 Yoke's Wash. Foods, Inc., 83 Wash. App. 293, 298-99, 921 P.2d
8 1080, 1083 (1996) (personal injury case where basis of damage
9 award could have been due to claims for negligence or assault and
10 battery). We hold, therefore, that the requisite intent was
11 established by the Judgment for assault and battery.

12
13 CONCLUSION
14

15 The bankruptcy court properly applied issue preclusion to the
16 state court Judgment in order to determine that a "willful and
17 malicious" injury had been established from the allegations of
18 assault and battery. The bankruptcy court's judgment of
19 nondischargeability pursuant to § 523(a)(6) is therefore
20 **AFFIRMED.**

U.S. Bankruptcy Appellate Panel
of the Ninth Circuit
125 South Grand Avenue, Pasadena, California 91105
Appeals from Central California (626) 229-7220
Appeals from all other Districts (626) 229-7225

NOTICE OF ENTRY OF JUDGMENT

BAP No. EW-05-1379-MaHK

RE: LEONARD R. GREGER

A separate Judgment was entered in this case on September 1, 2006.

BILL OF COSTS:

Bankruptcy Rule 8014 provides that costs on appeal shall be taxed by the Clerk of the Bankruptcy Court. Cost bills should be filed with the Clerk of the Bankruptcy Court from which the appeal was taken.
9th Cir. BAP Rule 8014-1

ISSUANCE OF THE MANDATE:

The mandate, a certified copy of the judgment sent to the Clerk of the Bankruptcy Court from which the appeal was taken, will be issued 7 days after the expiration of the time for filing a petition for rehearing unless such a petition is filed or the time is shortened or enlarged by order. See Federal Rule of Appellate Procedure 41.

APPEAL TO COURT OF APPEALS:

An appeal to the Ninth Circuit Court of Appeals is initiated by filing a notice of appeal with the Clerk of this Panel. The Notice of Appeal should be accompanied by payment of the \$255 filing fee (effective November 1, 2003) and a copy of the order or decision on appeal. Checks may be made payable to the U.S. Court of Appeals for the Ninth Circuit. See Federal Rules of Appellate Procedure 6 and the corresponding Rules of the United States Court of Appeals for the Ninth Circuit for specific time requirements.

CERTIFICATE OF MAILING

The undersigned, deputy clerk of the U.S. Bankruptcy
Appellate Panel of the Ninth Circuit, hereby certifies that a copy
of the document on which this certificate appears was mailed this date
to all parties of record to this appeal.

By: Patti Ippolito

Deputy Clerk: September 1, 2006